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Via E-mail to reg.review@nigc.gov

Tracie L. Stevens, Chairwoman
Daniel Little, Associate Commissioner
National Indian Gaming Commission
1441 L Street, N.W., Suite 9100
Washington, DC 20005

Re: Comments on Proposed Rule, 25 C.F.R. Part 543 – Minimum Internal Control Standards (78 Fed. Reg. 11793 (Feb. 20, 2013)).

Dear Chairwoman Stevens and Commissioner Little:

On behalf of the Seminole Tribe of Florida (the "Tribe"), we offer the following comments in response to the National Indian Gaming Commission's ("NIGC" or "Commission") Proposed Rule, 25 C.F.R. Part 543 - *Minimum Internal Control Standards* ("MICS") which revises 25 C.F.R. §§ 543.2, 543.17 and 543.21 regarding the standards for drop and count, and surveillance of kiosks.

As an initial matter, the Tribe is concerned that the proposed standards for kiosks may exceed the Commission's authority. As held by the court in *Colorado River Indian Tribes v. Nat'l Indian Gaming Comm'n*, 466 F.3d 134 (D.C. Cir. 2006), the Commission's authority to impose MICS (in the absence of agreement by the Tribe) is limited to Class II gaming. However, kiosks are not a Class II game or gaming activity. As such, they do not appear to fall within the Commission's regulatory authority. The issue is particularly significant in the case of a tribe, such as the Seminole Tribe, that offers both Class II and Class III games in the same facility.

The Tribe further notes that the scope of the rule is unclear. The existing definition of "*Kiosk*" is intentionally broad and means "a self serve point of sale or other component capable of accepting or dispensing financial instruments and may also be capable of initiating cashless transactions of values to or from a patron deposit account or promotional account." 25 C.F.R. § 543.2. Thus, many different types of kiosks are covered by the definition, including those that do not accept or dispense currency, such as "comp kiosks." However, the proposed standards for kiosks appear to be focused on currency issues. At a minimum, the Tribe believes that the Commission should clarify that its proposed standards only apply to kiosks that accept or dispense currency.

1. Proposed Rule 25 C.F.R. § 543.2 – What are the definitions for this part?

The Tribe believes the proposed definition of *currency cassette* should be revised. The proposed definition is a "locked compartment that contains a specified denomination of currency. Currency cassettes are inserted into kiosks, allowing them to dispense currency." However, not all currency cassettes are "locked" as provided in the definition. Some kiosks will hold, within a locked compartment, multiple currency cassettes that are "sealed" with secure tamper-proof tape or other methods that provide a satisfactory level of security. This proposed definition also is contrary to the existing language in § 543.18(d)(3) which requires "Currency cassettes [to] be secured with a lock *or tamper resistant seal...*" (emphasis added).

The Tribe's concern is that the Commission is proposing a definition which may only apply to one type of currency cassette. Additionally, the storage racks and carts used to transport the currency cassettes already are required to be locked pursuant to existing § 543.17(h). Thus, requiring a separate lock on each currency cassette is an unnecessary level of security. As proposed, the definition would mean that all currency cassettes within a kiosk unit would need a lock and key, at a cost of \$100 per lock. This could increase the cost of a kiosk by \$600. A tribe with medium sized casino may have 15-20 kiosks, and because of the new definition would incur an increased total cost of \$9,000 - \$12,000 for kiosk security. Such a cost is unwarranted. The Tribe proposes that the *currency cassette* definition be revised to mean a "secure compartment that contains a specified denomination of currency... ."

2. Proposed Rule 25 C.F.R. § 543.17(h) – Kiosk drop, count and fill standards.

The language of proposed § 543.17(h) sets forth procedures that must be followed when a kiosk drop and count occurs. Notably, the proposed § 543.17(h)(2) requires three agents to be "involved in the drop process" with one of those agents to be "independent of kiosk accountability." There is no difference in the number of required agents, depending on the size (tier level) of the facility or the type of kiosk. This requirement is unreasonable, especially for smaller facilities. The Tribe believes that two agents are sufficient for the drop process, just as the existing § 543.18 requires "two agents" whenever a kiosk or currency cassette is filled. The Tribe notes that surveillance can be utilized when the two agents are engaged in the kiosk drop and count process.

Proposed § 543.17(h)(4) provides that whenever "financial instrument storage components or currency cassettes are accessed" an independent agent must prepare a "kiosk report" which includes: date and time, total bills, total amount of currency, total amount and number of vouchers accepted, as well as the "unique asset identification number of the kiosk" and the "unique identification number for each financial instrument storage component." The Tribe believes this proposed requirement is

excessive. Instead, the Tribe believes that there should be exceptions to this requirement for routine kiosk service or maintenance issues like a "bill jam." These actions should be documented, but do not justify generating a new kiosk report.

The Tribe recommends that the language of §543.17(h)(4) be revised as follows:

Any time the financial instrument storage components or currency cassettes ~~are accessed within the kiosk~~ need to be filled or reconciled, and prior to any transactions being processed through the kiosk, an agent independent of the count must run a kiosk report or produce documentation which at a minimum reflects:

- (A) Date and time;
- (B) Unique asset identification number of the kiosk;
- (C) Unique identification number for each financial instrument storage component or currency cassette in the kiosk, if applicable;
- (D) Total amount of currency dispensed;
- (E) Total number of bills dispensed by denomination;
- (F) Total dollar amount of vouchers accepted per financial instrument storage component or currency cassette; and
- (G) Total number of vouchers accepted per financial instrument storage component or currency cassette.

The undefined term "unique asset identification number" is used in the Proposed § 543.17(h)(4). The proposed rule requires an "asset identification number" for all kiosks and a similar but slightly different "unique identification number" for financial instrument storage components in a kiosk. There is no corresponding requirement for a unique asset identification number for each currency cassette, even though these devices are regularly removed from a kiosk. If the proposed term remains, the Tribe requests that it be clearly defined and used in a uniform manner.

The proposed rule at § 543.17(h)(4)(ii) provides that the kiosk report cannot be "viewed by any member of the count team and must be immediately forwarded to accounting or placed in a secure storage area..." In practice, it is unclear if this procedure will be workable for every tribal gaming facility. The proposed rule also assumes that all tribal casinos will use a member of the count team to verify kiosk funds. Many casinos use another department (like the cage) to fund, count, and reconcile the kiosks. The Tribe believes that as long as the report is properly secured, tribes should have the flexibility to develop a process that works for their facility.

For currency cassettes, the proposed § 543(h)(6) provides that after the cassette has been filled "the machine" must be tested to verify the currency cassette contains the correct denominations and was installed properly. Presumably the NIGC is referring to the "kiosk" when it uses the term "machine." This should be clarified.

3. Proposed Rule 25 C.F.R. § 543.17(i) – Kiosk count standards.

The Tribe suggests that the existing language of § 543.18(d) regarding kiosk "counts" be reconciled with the provisions of this Proposed Rule. Some tribal facilities may not perform the kiosk count in the same count room used to count gaming machine revenue. A tribe may use a satellite "kiosk bank" or other secure kiosk count area and have a defined kiosk count team. Accordingly, the language of proposed §543.17(i)(2)-(3) may not work in practice for all facilities. The Tribe suggests that if the kiosk count is occurring in a "secure area" that is not the count room, that access should be restricted to members of the department that is responsible for verifying the kiosk funds. In the event that the kiosk count takes place in the "count room" the Tribe agrees that access should be restricted to the drop and count team members.

The Proposed Rule at § 543.17(i)(6) requires the "count equipment and systems" to be tested "before the first count begins... ." The Tribe does not believe it is practical to require smaller facilities to test their currency counters before the "first count begins." Tribal facilities already periodically test the currency counting equipment, and it is not clear what the Commission means by the "first count." Equally unclear is the term "count ... systems." The Tribe request that the Commission elaborate as to how a tribe would test its "count... systems."

The language of proposed §543.17(i)(7) provides that when a "currency counter interface" is used the "currency drop figures must be transferred via direct communications line or computer storage media to the accounting department." This type of language dictates the type of technology that must be used rather than the procedure, and is more akin to a technical standard than an internal control standard.

4. Proposed Rule 25 C.F.R. § 543.17(j) – Controlled Keys .

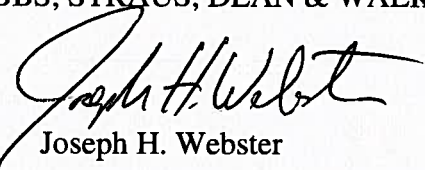
Finally the proposed § 543.17(j)(1) requires that "Kiosk currency cassettes" must have a "separate and unique key lock, or other alternative secure access method." The compartment within a kiosk that contains the currency cassettes will have this type of separate and unique lock, or a similar feature. However, a separate and unique key lock should not be required for each currency cassette. As noted above, requiring a separate and unique key lock on each currency cassette is unreasonable and would require tribes to purchase new equipment or retrofit existing currency cassettes.

Tracie L. Stevens, Chairwoman
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On behalf of the Seminole Tribe of Florida, we appreciate the opportunity to comment on the Commission's Proposed Rule.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP

By:  Joseph H. Webster

cc: Jim Shore, Esq.